Case Numbers: 2208446/2016

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Mr W Murdoch		**Italia Conti Academy of the Theatre Arts Ltd**

REASONS FOR THE RESERVED JUDGMENT SENT TO THE PARTIES ON 14 FEBRUARY 2018

Introduction

1 The Respondents are the corporate vehicle for the Italia Conti Academy of Theatre Arts, a performing arts school with two sites, one in the City of London and one in Clapham.

2 The Claimant, Mr William (Bill) Murdoch, who is some 59 years of age, worked for the Respondents in a senior accounting capacity for over 10 years ending on 6 November 2106. Throughout, he was treated as self-employed, rendering invoices and receiving payment through a limited company. The engagement was terminated without notice by the Respondents.

3 By his claim form presented on 21 December 2016 the Claimant brought complaints of unfair dismissal and detrimental treatment on public interest disclosure ('PID') grounds, 'ordinary' unfair dismissal, wrongful dismissal and unauthorised deductions from wages. All claims were resisted in the response form.

4 At a preliminary hearing before Employment Judge Segal QC on 7 and 8 September 2017 it was held that the Claimant had at all material times been employed by the Respondents as a 'worker' (under the Employment Rights Act 1996, s230(3)), but not as an employee (under s230(1)). The result was that he was left with his detriment claims and complaint of unauthorised deductions from wages. The money claim was subsequently settled.

5 It was common ground that the PID claims rested on two disclosures, both of which were said to have been made orally at a meeting on 4 October 2016 and in writing in a grievance dated 18 October. The first disclosure was pleaded in the grounds of claim, para 6 as follows:

> **… the Claimant stated that he believed that there may have been money laundering offences committed by the previous Principal [Anne] Sheward which would need to be reported to the police.**

By contrast, in an agreed list of issues produced at a case management hearing on 22 June 2017, the disclosure was formulated thus:

> **… that Ms [Anne] Sheward had misappropriated company funds for her own use.**

6 The second disclosure was agreed to be that the Respondents had failed to carry out Disclosure & Barring Service ('DBS') checks in respect of individuals including Graham Sheward, Christopher Pritchard and Colin Friedlander (characterised as members of a management team brought in at the beginning of October 2016). Here there was no material difference between the pleaded case and the agreed list of issues.

7 By the end of the hearing, the parties were agreed that the alleged detriments were the following:

(1) Aggressive treatment of the Claimant at a meeting on 4 October 2016;
(2) Intimidatory behaviour towards the Claimant on 11 October 2016;
(3) Failure to investigate the Claimant's grievance of 18 October 2016;
(4) The fact and manner of the termination of the Claimant's retainer.

8 A hearing to determine all liability issues in the claims of the Claimant and two others, Ms Susan Jolley and her brother Mr Roy Jolley, was listed for seven days commencing on 30 November 2017. Mr Jolley's case was settled shortly before the hearing. The claims of the Claimant and Ms Jolley, both represented by Mr Moray Laing, a consultant, resisted on behalf of the Respondents by Ms Gillian Crew, counsel, came before the Employment Judge and Miss Ebenezer on the morning of day one. We explained with regret that, owing to the dwindling number of lay members, the Tribunal was not able to field a panel of three until the following day and it was therefore agreed that we would adjourn to day three to allow time for reading witness statements and documents in private on day two. Having been joined by Ms Plummer on day two, we proceeded with our reading. Day three was lost to a dispute about whether, over the interval, a binding settlement of Ms Jolley's claims had been achieved. It was agreed that that question should be allocated to another judge and so the main hearing was adjourned to day four. On that day we learned that the issue about the alleged settlement had resolved itself and that the parties were agreed that Ms Jolley's claims had been fully compromised, so that we could at long last start hearing the Claimant's claims. The evidence occupied days four and five and closing submissions took us to mid-way through day six. That left insufficient time to complete our decision-making because (owing to a long-standing commitment) the judge was unavailable on day seven, but fortunately we were able to meet and complete our deliberations soon afterwards, on 21 December.

The Relevant Law

9 The Employment Rights Act 1996 ('the 1996 Act'), s43B, includes:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following –**

> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,**
>
> **…**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered,**
>
> **…**
>
> **(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.**

10 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

11 By s47B(1) a worker has the right not to suffer a detriment (which may take the form of an act or a deliberate failure to act) done on the ground that he has made a PID.

12 The Tribunal has jurisdiction to consider a complaint alleging contravention of s47B(1) (see s48(1A).

13 We have reminded ourselves that the legislation is concerned with disclosures of information. In *Cavendish Munro Risks Management Ltd-v-Geduld* [2010] IRLR 38, the EAT (Slade J and members) stressed the difference between a piece of information and a pure allegation, and that a 'disclosure' of the latter kind was not within the statutory protection. In *Kilraine-v-London Borough of Wandsworth* [2016] IRLR 422, Langstaff J remarked that the *Geduld* distinction should be treated with care, pointing out that it was not to be found in the legislation. Reading the case-law (not confined to these two authorities) together, we direct ourselves that the disclosure must be of information, but the Tribunal must be wary of arguments which seek to exclude 'mere allegations'. Often a statement which appears to take the form of an allegation carries information within it, expressly or implicitly. The necessarily fact-sensitive question in every case is whether the communication in question, properly analysed, conveyed information.

14 By the 1996 Act, s48(2) it is provided that:

> **On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.**

In *Fecitt-v-NHS Manchester* [2012] IRLR 64 the Court of Appeal held that the test under s48(2) was the same as applies under the law of discrimination, namely that liability attaches where the disclosure is at least a material influence upon the detriment complained of. Although strictly *obiter*, this pronouncement has been consistently applied in the higher courts and we have no doubt that it is binding upon us. In *Kuzel-v-Roche Products Ltd* [2008] IRLR 530 CA, an unfair dismissal case under the 1996 Act, s103A, the Court of Appeal pointed out that it is open to

a Tribunal to find (assuming there is an evidential basis for doing so) that the true reason for dismissal is one not advanced by either side. That principle is self-evidently applicable also in the context of a detriment claim, notwithstanding s48(2).

Oral Evidence and Documents

15 We heard oral evidence from the Claimant and, on behalf of the Respondents, Ms Anne Sheward, Mrs Samantha Newton and Ms Gaynor Sheward. All gave evidence by means of witness statements, some producing two.

16 We also pre-read the statements of Ms Jolley but, her case having been withdrawn in mid-hearing, she was not called to give evidence in support of the Claimant's claims.

17 In addition to witness evidence we read the documents to which we were referred in the three-volume bundle which contained over 900 pages.

18 Further documents were handed up separately. These included a chronology, a cast list, Mr Laing's closing submissions and Ms Crew's opening outline and closing submissions.

The Facts

19 The evidence was detailed and extensive but often of poor quality – particularly that of the Claimant and Anne Sheward, both of whom we found unprepossessing witnesses. We have had regard to everything put before us. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts essential to our decision, either agreed or proved on a balance of probabilities, we find as follows.

Setting the scene

20 The Italia Conti Academy was founded in 1911. It was taken over by a married couple, Don and Eve Sheward, in 1968. They built up the business and made a success of it. When they retired in 1984, management and control passed to the next generation of Shewards, Anne, Gaynor, Graham and Samantha (Newton), to whom we will refer where convenient as 'the siblings'. Of these, all but Graham became, at different times and for different periods, directors of the Respondents and/or associated companies.

21 Don and Eve Sheward died in 2013 and 2014 and their interests in the business passed to their children under the terms of a family trust.

22 At all relevant times the main assets of the business consisted of the properties in the City of London and Clapham.

23 Anne Sheward became Principal of the Academy on her parents' retirement, a responsibility which she retained until her resignation in September 2016 (to which we will return).

24 Gaynor Sheward has for many years run two agencies operated from an address in Surrey through an associated company of the Respondents. She was, however, and remains, a director and shareholder in the Respondents and has played a part in the running of the business over many years.

25 Samantha Newton was initially involved in the business but, in and after about 2001, set up and ran as Principal a new school in Guildford, known as the Italia Conti Arts Centre ('ICAC'). The corporate vehicle for that venture is another associated company of the Respondents. As we will relate, Mrs Newton replaced Anne Sheward as Principal of the Academy following her resignation in September 2016.

26 Graham Sheward has at all material times had an interest in the business through the family trust. He seems to have held no official position but it is plain from correspondence shown to us that he was an influential figure behind the scenes.

27 For some 40 years up to December 2011, the Finance Director of the business was Sheila Jackson, an aunt of the siblings. From December 2000 she was supported in her finance and accounting responsibilities by Ms Jolley, who was recruited as Accounts Manager but also referred to as Finance Controller. Later on, Ms Jolley was given additional responsibilities as Head of Human Resources. The other members of the finance and accounts team in 2000 were Tim McKerr, Bursar, and Russell Simpson, Company Accountant.

28 The Claimant is a fellow of the Association of Accounting Technicians. He is not a Chartered Accountant. Having worked for some years as Bursar at Mrs Newton's school in Guildford, he was engaged by Anne Sheward in 2006 to provide accounting and financial consultancy services to the Academy. It was agreed that he would work on a 'freelance' basis and his status never changed. Full findings explaining the judgment of Employment Judge Segal QC on the status issue are set out in the reasons accompanying that judgment. For some reason the Claimant appeared before us to question that determination, which has not been the subject of any appeal.

29 By the time of Sheila Jackson's departure, Mr McKerr and Mr Simpson had left and the only remaining members of the finance and accounts team were the Claimant and Ms Jolley. They seem to have worked harmoniously together and no doubt they largely agreed on the appropriate allocation of duties, but it was clear that the Claimant was the senior figure, despite the fact that he was not an employee and seems to have worked rather less than full-time. He was paid much more than her, was a member of the senior management team (as such, undertaking strategic and 'fire-fighting' tasks in addition to more routine duties), and was seen by her as her line manager, at least from Sheila Jackson's departure onwards (see her witness statement, para 4). Again, we are puzzled by his reluctance to accept the plain fact that he had a degree of supervisory authority over her.

The main narrative

30 The business of the Academy was often beset by cash-flow problems over the years, but deeper financial difficulties developed, becoming particularly acute in 2015. The main causes were a decline in student numbers, a build-up in pressing repairs and maintenance work and the unwillingness of the bank to increase its lending. In an email of 7 November 2015 the Claimant warned Anne Sheward of a likely cash-flow deficit, against an overdraft facility of £300,000, of £600,000 by the end of the month and £750,000 by the following summer.

31 These alarming figures caused the Claimant to write a confidential email to Mrs Newton on 28 November 2015 directed to the financial predicament of the Academy, which he blamed largely on:

> **… lack of vision, strategic planning and decision making plus a management team without delegated power or authority to enable the business to adapt to the changing needs of the business environment.**

He went on to set out proposals for salvaging the Academy by *inter alia*, implementing a management 'buyout', converting it into a charitable or 'not for profit' organisation and procuring the immediate resignation of the incumbent Principal, Anne Sheward.

32 The Claimant made a similar suggestion directly to Anne Sheward in an email of 2 December 2015, save that, in place of her resignation, he proposed the establishment of a 'Management Group' to prevent further deterioration of the business and set strategy for the future.

33 In an email of 7 December 2015 Mrs Newton told the Claimant that, in a recent conversation she had had with the Academy's auditor, he had agreed that it was necessary to put the business under new management and she had asked him, "to try and get through to Anne before we have nothing left to fight for". She went on to say that she would not sacrifice her family for money and did not want her sister to be hurt.

34 In an email to Anne Sheward of 4 March 2016, the Claimant was much more frank than he had been in December. He identified the fundamental cause of the problems of the Academy as being the lack of strategic decision-making. He also expressed the view that she had lost the confidence of the management team.

35 By the summer of 2016 the Academy's problems had reached a critical state. On 29 June Anne Sheward wrote to the other siblings referring to the measures underway to move to a new bank and to fund the business in the interim by means of a bridging loan which, given current income, appeared unsustainable (although she did not mention, and may well not have known, the level of proposed additional borrowing and was unclear as to the likely duration of the 'bridge' or costs of repayment). She stated that, if the new bank did not "come through", the Clapham property would be lost. Mrs Newton advised that the 'bridge' would have to last as long as it took to transfer the company's business to the new bank.

36 These exchanges included references to 'Chris'. He, Christopher Pritchard, was already advising Mrs Sheward informally by that stage and seems to have been closely involved in the dealings with the banks. As will be explained, he took on a formal responsibility with the Respondents in early October.

37 Another individual, Mr Colin Friedlander, became involved in the running of the Academy in the summer or early autumn of 2016, although his precise role and status are unclear. He seems to have been a friend or associate of Graham Sheward. At all events, the two worked closely together. The Claimant told us that Mr Friedlander is a powerfully-built man, a point which he seemed to regard as significant.

38 Anne Sheward knew that the Claimant and Ms Jolley were both well aware that the business was in severe trouble and wrote to them the same day asking for an explanation of its predicament. She did not mention any proposal to switch banks or take out a bridging loan. The Claimant replied with a detailed analysis, citing the main factors behind the Academy's financial problems (summarised above). He made no mention of misuse of petty cash or misappropriation of funds.

39 On 22 July 2016 Anne Sheward wrote an email to her brother expressing alarm about the cost of the bridging loan (which, it seems, had then been agreed) and the viability of meeting the repayments. She said that she was unable to sleep for worry and was "feeling ill". He attempted to reassure her, while acknowledging that the Academy was in "a bad place". He also said that he expected to recoup funds which had "gone missing".

40 On 18 September 2016 Anne Sheward wrote to three staff members, who included Ms Jolley, stating that, "for extremely personal reasons and for the good of [her] health", she was driven to taking "earlier than anticipated 'retirement' with immediate effect", and that oversight of the Academy would pass at once to Mrs Newton.

41 Mrs Newton duly took over as Principal of the Academy the following day. Some three days later, she was seriously injured in an accident, suffering complex fractures of both arms. She underwent several operations and was on sick leave for some months. It seems that *de facto* control of the business then passed to Ms Hayley Newon-Jarvis and Mr Chris Jarvis, Mrs Newton's daughter and son-in-law.

42 Also on 19 September 2016 the Academy opened a new account with Lloyd's Bank, ending its 40-year relationship with HSBC and its predecessors.

43 At a meeting the same day the Claimant and Ms Jolley were told that an investigation into the finances of the business was to take place.

44 In a conversation on or about 21 September the Claimant and Mrs Newton spoke about an allegation that he had made a private approach to the solicitor responsible for management of the Sheward family trust. He denied it and Mrs Newton, believing him, said that he had been done a "terrible injustice". Before us, he accepted that the allegation had been true and his denial, a lie. That evidence had the virtue of candour. What he said on this episode in his witness statement (paras 92-93) did not: on the contrary, it was simply false.

45 On 3 October 2016 the Claimant and Ms Jolley were informed that Mr Pritchard had been appointed as Finance Director of the Academy. He took on the post in a 'consultancy' capacity. We have been shown no document setting out his mandate, duties and powers. Despite his self-employed status, it seems to have been made clear that he was thenceforth the senior figure in the finance and accounting team.

46 On the afternoon of 4 October 2016 a meeting took place attended by the Claimant, Ms Jolley, Ms Newton-Jarvis, Mr Pritchard, Graham Sheward and Mr Gary McInnis, who was introduced as a forensic investigator from a firm of accountants called Riddingtons. Ms Newton-Jarvis explained that an investigation was underway and Graham Sheward said that significant sums had been taken out of the business. There was mention of possible police involvement. The Claimant and Ms Jolley felt that they were under suspicion. We find that, at one point, he said something to the effect that if impropriety had taken place there might be grounds for alleging "money-laundering" offences on the part of the previous Principal (*ie* Anne Sheward) and that such offences might need to be reported to the police. The nature of the possible offences was not explained. In particular, the Claimant did not say how the previous Principal (or anyone else) might have used the Academy's bank account (or any other asset) to launder 'dirty' money. Nor, so far as we are aware, has he offered any explanation since as to how money-laundering may have occurred. Nor did he make the allegation aired with considerable abandon before us that Anne Sherward had simply misappropriated the Academy's money for her own use. The meeting was tense. Mr Sheward raised his voice on one or two occasions.

47 In reaching these findings, we have considered and rejected as false the Claimant's attempts in his oral evidence to improve upon his witness statement by adding fresh allegations (also unaccountably absent from the claim form) as to things said at the meeting on 4 October.

48 The Claimant relies on an event on 11 October 2016. His case is that, "in open office" Mr Colin Friedlander said that a member of the Fraud Squad was going to visit the office that afternoon. He asserts that the statement was untrue and designed to intimidate him. We find that the remark was made but, whether or not an officer actually attended that day (or on any other occasion), we are not persuaded (by mere assertion) that Mr Friedlander passed the comment believing it to be false or doubting its accuracy, or that it was intended to intimidate the Claimant.

49 On 18 October 2016 the Claimant issued a formal grievance addressed to Mrs Newton. It included complaints of "aggressive behaviour" by Graham Sheward at the meeting on 4 October and "intimidation" by Mr Friedlander on 11 October. These were references to the events on those dates about which we have made findings above. As to the first, he stated:

> **… an aggressive manner followed my comment that if financial impropriety were to be found there may be grounds for possible money laundering offences against the previous Principal which may need to be reported to the police authority.**

As to the second, his complaint was the same as his case before us.

50 In the time between the presentation of the grievance and the termination of his retainer on 6 November, no step was taken to investigate or otherwise deal with the Claimant's grievance.

51 On 19 October 2016 a letter was sent by Riddingtons to Mr Pritchard. It runs to seven pages of closely-typed text and poses numerous questions about the company's accounting records. One "area of great concern" was the documentation relating to petty cash, which was reported as showing huge cash withdrawals treated as petty cash on the accounting system (over £500,000 for each of the years to 2015 and 2016) and very significant differences between the sums withdrawn and those allocated as expenses. There are also references to particular "questionable" petty cash transactions going back to 2009 and to the records of Anne Sheward having drawn (exactly) £2,000 as "expenses" in almost every monthly report seen with no record whatever of the expenditure purportedly being recouped. In addition, the letter mentioned defective or questionable invoices, some issued in the names of companies of which there was no record on the internet and appeared to be fictional. Questions were also raised about payroll matters, including substantial overtime payments in favour of Ms Jolley and Mr Jolley, the latter being recorded as having been paid on one occasion for 150 hours' overtime purportedly worked in a single month. Substantial payments in favour of Ms Jolley and Mr Jolley classified as 'holiday pay' were also queried. Likewise, Riddingtons expressed interest in the staff pensions arrangements, noting in particular that pension rights appeared to be confined to only four members of staff and asking for an explanation for the steep rise in the Academy's contributions to Ms Jolley's pension between September 2015 and February 2016, during which time her basic salary was unchanged. (The letter did not query more generally the remarkable *scale* of the contributions to Ms Jolley's pension, which seem to have risen during that period from 33% to 58% of basic salary.)

52 On 24 October Ms Jolley sent an email to Anne Sheward, Gaynor Sheward and Mrs Newton expressing concerns about the way in which the investigation into the company's finances was being conducted. She complained that she was being treated unfairly and made to feel a suspect. She mentioned finding a listening device in her office. She also repeated the Claimant's complaint about Graham Sheward, Mr Pritchard and Mr Friedlander not having been subject to DBS clearance checks.

53 Ms Jolley was invited to a meeting which was held on 31 October. The others present were Mr Pritchard, Mr Vincent Browne, a solicitor instructed by the Respondents, and Mr Jon Mayall, described as the company's security consultant. At the end of the meeting Mr Pritchard told Ms Jolley that she was being summarily dismissed. In a letter of 2 November 2016 Mr Pritchard confirmed the dismissal and offered these reasons (we leave the punctuation uncorrected):

> **I explained that your summary dismissal was a unanimous decision of this Company's Board of Directors. The decision was based on a report of a forensic investigation conducted by an independent Auditor, Mr Gary McInnis of Riddingtons Ltd. The report concluded that there is evidence of a considerable misappropriation of funds, especially in respect of petty cash, for which you have acknowledged you had primary managerial responsibility. This particular matter is being referred to the relevant Metropolitan Police authority.**

> **In reaching their decision, the Board also had regard not only to Mr McInnis's advice that your failure to maintain the Company's books of account up to date and to an acceptable professional standard has exposed this Company's Directors to serious sanctions by HM Revenue & Customs. But also to Mr McInnis's discovery of irregular and unauthorised payments that you made to, and on behalf of, your brother and yourself through the monthly payroll.**

The letter advised Ms Jolley of her right of appeal under the disciplinary procedure.

54 The Respondents also dismissed Mr Jolley at a meeting on 31 October 2016, again confirming the dismissal in a letter of 2 November. The letter referred to the Riddingtons report and stated that the company believed that he had been a party to the misappropriation of funds. Attention was drawn to his right of appeal. Mr Jolley had nothing to do with the accounting function and there is no suggestion of any 'whistle-blowing' by him.

55 The Claimant's retainer was summarily terminated by means of a letter from Mr Pritchard dated 6 November 2016. In his case there was no prior meeting and no pretence of any form of disciplinary process. The letter includes the following passages (again with punctuation uncorrected).

> **I am writing to advice (sic) you that this Company's Board of Directors have decided to terminate W&DM Accountancy Ltd's[1] consultancy agreement with them with immediate effect.**
>
> **The decision is based on a report of a forensic accountancy investigation conducted by an independent firm of Accountants, Riddingtons Ltd. The report concluded that there is evidence of a considerable misappropriation of funds, especially in respect of petty cash and the payroll. This misappropriation appears to have occurred when you have been this Company's senior professional accountant. Which suggests that you either chose to turn a blind eye to what was happening, or else patently failed to keep your eye on the ball. Either way, this Company has lost all confidence in your ability to protect and promote its best financial interests.**
>
> **Moreover, this Company believes you garnered a commission payment of £37,000 in respect of an interest rate hedging compensation refund received from HSBC in 2014, by misrepresenting and/or exaggerating the extent of your role in obtaining the refund.**
>
> **These matters has (sic) been referred to the relevant Metropolitan Police authority.**

The letter offered no right of appeal.

Miscellaneous facts

56 In 2014 the Claimant was instrumental in securing for the Respondents a rebate (or perhaps an ex gratia payment) of over £850,000 in respect of the misselling of a hedge fund investment. He obtained the agreement of Anne Sheward in advance that if the application for the rebate was successful a sum of money would be paid to him as a reward and in due course he received £35,000 and then a further £2,000, described as a bonus or commission. In evidence before Employment Judge Segal QC he accepted that his work in recovering the rebate was no more than "part and parcel" of his everyday duties.

[1] The company through which the Claimant provided his services to the Respondents

57 The Academy's financial affairs were reported to the Metropolitan Police, apparently by Mr Pritchard. Some form of investigation was carried out but no charges resulted.

Secondary Findings and Conclusions

Protected disclosures?

58 We are satisfied that the alleged disclosure on 4 October 2016 was not within the protection of the legislation. The Claimant did not disclose any information. Alternatively, if he did it was only information about his own state of mind, namely his view that *if* wrongdoing had occurred, it *might* have involved money laundering by the previous Principal and *might* need to be reported to the police. He certainly did not disclose information which, in his belief (reasonable or otherwise), tended to show any of the matters listed in the 1996 Act, s43B(1). This was not even a case of a 'mere allegation'. The Claimant's comment was prefaced by the word 'if' and cannot be read as though that word had been omitted. (Of course, language can be used to convey all sorts of meanings. We are alive to the obvious point that a disclosure of information can be made through words which, literally interpreted, mean something quite different from the sense intended – perhaps the very opposite. But we are satisfied that there was no irony here and no attempt to communicate something materially different from the natural meaning of the words used.)

59 As for the grievance of 18 October, we find in it no disclosure in relation to alleged wrongdoing by Anne Sheward going further than what was said on 4 October. The reasoning above is repeated.

60 These findings are fatal to the claims based on the alleged disclosures in the meeting of 4 October and the grievance of 18 October 2016 that Anne Sheward had misappropriated the Respondents' money for her own use and/or committed money-laundering offences, but in case they are erroneous we will complete the analysis. If we had held that there was a disclosure of information capable in principle of falling within the language of the 1996 Act, s43B(1), we would have found that it was within the statutory protection. We would have concluded that the Claimant reasonably believed that it was made in the public interest and tended to show that a criminal offence had been committed and/or that someone had failed to comply with a legal obligation. We see the force of the Respondents' objection that the disclosure was made very late and only after the Claimant first sensed that he was under suspicion, but we are mindful that good faith is no longer a requirement and a disclosure may be protected despite the fact that it is motivated by self-interest.

61 As for the disclosure in the grievance about the named individuals not having been subject to DBS clearance, the Respondents rightly conceded that it was capable of falling within the statutory protection. We find that the Claimant reasonably believed that it was made in the public interest and that the information disclosed tended to show a breach by the Respondents of a legal obligation. The reasons stated in the last paragraph are repeated.

Detriments?

62 We do not accept that the Claimant suffered any detriment on 4 or 11 October 2016. The meeting on the earlier date may well have been uncomfortable. The Claimant and Ms Jolley had been responsible for the financial management of the Academy for a substantial period of time and there were ample grounds for suspecting that their custodianship had been less than effective in protecting the assets of the organisation. There were certainly a lot of questions to be answered. But we are not persuaded that Mr Sheward or anyone else (Mr Friedlander was not present) subjected the Claimant or Ms Jolley to aggressive treatment on 4 October as claimed.

63 Nor did the events of 11 October engage the Claimant's legal rights. On our primary findings, Mr Friedlander passed a remark, not directed at the Claimant personally, which is not shown to have been false or malicious or intimidatory or otherwise objectionable. Again, there was no detriment.

64 We find arguable detriments in the alleged failure to investigate the Claimant's grievance (although the period between its presentation and his departure was short). And the termination of his retainer was plainly a detriment.

Done 'on the ground that' the Claimant had made a protected disclosure?

65 In case any of our conclusions so far are mistaken, we will analyse this question in relation to all alleged protected disclosures and detriments on which the Claimant relies.

66 We are satisfied that if there was any detriment in the exchanges of 4 and 11 October it was not on the ground of, or in any material way influenced by, any disclosure of financial impropriety made by the Claimant on the earlier occasion. As we have said, the meeting was uncomfortable for him and Ms Jolley because there were a lot of questions to be answered about the Respondents' finances, for which they had had responsibility over many years. Those questions included whether resources had been misappropriated and, if so, by whom. But it was plain that, if there had been misappropriation, it was possible that Anne Sheward, alone or not, had been involved. The Claimant told us (witness statement, para 90) that he interpreted a comment by Ms Newton-Jarvis or Mr Jarvis on 19 September about money having "gone missing" as alluding to "Anne's activities". And, referring to the meeting of 4 October itself, his evidence (witness statement, para 116) was that remarks of Graham Sheward on that occasion about money being taken out of the business made it "clear for the first time that the finger was being pointed at Susan and I (sic) and that we may be implicated or were suspected of colluding with Anne" (our emphasis). Any hostile behaviour by Graham Sheward or Mr Pritchard was not, in our view, anything to do with any remark by the Claimant alleging or suggesting impropriety by Anne Sheward because, we find, both plainly believed that that was, to put the matter at its very lowest, a possibility. Rather, it was because he and Ms Jolley were also suspected of wrongdoing or, at least, of having failed to protect the organisation's assets.

67 We are clear that any detriment on 11 October was also nothing to do with any protected disclosure on 4 October. There is no reason for supposing that Mr Friedlander was aware of any relevant disclosure. In any event, for the reasons just stated in relation to Mr Sheward and Mr Pritchard, any objectionable treatment was not in any way related to anything said by the Claimant on 4 October.

68 There is, in our view, nothing in the suggested link between the Respondents' failure to investigate the grievance and either of the alleged protected disclosures. The grievance was addressed to Mrs Newton, who was absent on sick leave and did not return until long after the Claimant's departure. She did pass her managerial responsibilities over to her daughter and son-in-law, but there is no reason to think that the fact that they took no action on the grievance during the short time between its issuance and the termination of the Claimant's service had anything to do with either alleged protected disclosure. There is no evidence that they even knew what was said on 4 October or read the grievance or even knew that a grievance been presented. In any event, any suggestion of possible wrongdoing by Anne Sheward would, we imagine, have been entirely unsurprising and unobjectionable to them, chiming with the suspicions (already mentioned) of Graham Sheward and, we have little doubt, his other two sisters. The grievance *may* have been passed on to Mr Pritchard (we have no evidence that it was). But if so, the same reasoning applies. He had been present on 4 October and the grievance added nothing on the subject of financial impropriety to what had been said on that occasion. As for the second protected disclosure, there is no reason to infer any connection with the failure to investigate the grievance. Again, there is no evidence that Ms Newton-Jarvis or Mr Jarvis was aware of the DBS clearance matter and, in any event, the idea that they neglected to deal with the grievance because of that entirely proper disclosure is, to our minds, improbable to the point of being fanciful. Nor, for the same reasons, is there any rational ground for suggesting that any failure by Mr Pritchard to investigate the grievance had anything whatever to do with the second disclosure.

69 Our reasoning in relation to the other alleged detriments applies equally to the final item, the termination of the Claimant's engagement. If, contrary to our view, he made a disclosure of suspected wrongdoing by Anne Sheward, that was no part of the reason for dispensing with his services. We have no doubt that Mr Pritchard, like Mr Sheward and the other two sisters, shared that suspicion. We judge it more likely than not that the decision to dismiss the Claimant and Ms Jolley was taken by Mr Pritchard jointly, or at least with the support of, Graham Sheward and perhaps Mr Friedlander. At all events, we are satisfied that it was based on the first Riddingtons report which, although it consisted largely of questions rather than answers, was seen as evidencing, at the very least, woefully ineffectual financial control over a substantial period. In the circumstances, the decision-makers took the view that the positions of the Claimant and Ms Jolley were untenable and that a new start was required. They may also have been motivated in part by the urgent need to save money. The requirement for a new start and financial savings may well have contributed to the decision to dismiss Roy Jolley, but no doubt those considerations were secondary to the key factors of his family ties with Ms Jolley and the Riddingtons evidence implicating him as a beneficiary of dubious payments of company funds. There is, in our view, no basis for the theory that the dispatch of the Claimant and Ms Jolley was part of an exercise in

"closing ranks" around Anne Sheward. That may or may not have happened later (the evidence is not sufficient to enable us to form any view). What is clear is that by the time of the Claimant's departure there had been no closing of ranks and an investigation into Anne Sheward's involvement in any financial impropriety was, given the contents of the Riddingtons report and the suspicions of the other siblings, Mr Pritchard and Mr Friedlander, very likely to follow. But, since she was away and, on her account, ill, it could not take place at once.

70 In so far as it was suggested that the *manner*, as opposed to the fact, of the dismissal is explained in any material part by the alleged disclosure of wrongdoing by Anne Sheward, we see nothing in this point. The way in which the Claimant was dispatched was, of course, unsatisfactory. It did not accord with sound employment relations practice. But the explanation given is obviously correct. The Claimant was (rightly, as EJ Segal QC found) not seen as an employee with protection against unfair dismissal. Accordingly, no semblance of a 'procedure' was followed. By contrast, Ms Jolley and Mr Jolley, acknowledged on all sides to be employees, were favoured with a process designed to shield the Respondents against findings of 'procedurally unfair' dismissal.

71 Substantially for the reasons stated above in relation to the other detriments relied upon, we are also satisfied that the termination of the Claimant's retainer was nothing to do with the second protected disclosure. There is, in our view, no rational basis for inferring a link of any sort between the fact or manner of the dismissal and that entirely unobjectionable disclosure.

72 In reaching our conclusions on the last, and only substantial, detriment claim, we have rejected Mr Laing's submission that, without evidence from Mr Pritchard, we cannot make a finding as to the reason for the termination of the Claimant's service. Our function is to do our best with the oral and documentary evidence put before us and apply common sense to arrive at the most plausible analysis of the available facts. That is what we have attempted to do.

Outcome

73 For the reasons stated, all claims pursued by the Claimant fail and the proceedings are dismissed.

EMPLOYMENT JUDGE Snelson on 14 February 2018